Responses to calls for tenders by subsidiaries of the same group: the Autorité amends its decision-making practice following a judgement of the CJEU

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The *Autorité de la concurrence* today issues a decision that marks a development in its decision-making practice. Up until now, the *Autorité* had regarded that it was unlawful for subsidiaries from the same group to respond to a call for public tenders by submitting bids that appear to be separate and independent, but which have in fact been coordinated, without notifying the public procurement agent. The CJEU has handed down a judgment that has prompted the *Autorité* to amend its previous decision-making practice: the CJEU ruled on 17 May 2018, in case « Ecoservice projektai », UAB, C 531/16, that even if subsidiaries from the same group respond separately to a call for tenders, they nonetheless constitute a single company within the meaning of European competition law. It was therefore not possible to hand out a fine for an anticompetitive practice in such a case, as it involved coordinated responses to calls for tenders submitted by companies from the same group.

This type of behaviour is, however, still likely to be sanctioned under public procurement law insofar as it can mislead the public procurement agent and distort the outcome of the public procurement process.

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See the press release